

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CR&R Incorporated

Employer,

And

PACKAGE AND GENERAL UTILITY  
DRIVERS, TEAMSTERS LOCAL UNION  
NO. 396

Petitioner.

Case Nos. 21-RC-262469;  
21-RC-262474

**EMPLOYER'S OPPOSITION TO REGIONAL DIRECTOR'S**  
**REQUEST FOR JUDICIAL NOTICE**

Jeffrey A. Berman  
[jberman@seyfarth.com](mailto:jberman@seyfarth.com) / 310-201-1541  
SEYFARTH SHAW LLP  
2029 Century Park East, Suite 3500  
Los Angeles, CA 90067

Jennifer L. Mora  
[jmora@seyfarth.com](mailto:jmora@seyfarth.com) / 415-732-1146  
SEYFARTH SHAW LLP  
560 Mission Street, Suite 3100  
San Francisco, CA 94105

The Regional Director asks the National Labor Relations Board (“Board”) to take judicial notice of a fact that is not relevant to any pending issue and thus, for this reason alone, should be denied. *See Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386, 392 n.7 (9th Cir. 2000) (denying request for judicial notice of information not relevant to any issue on appeal). Specifically, the Regional Director asks the Board to take judicial notice of the fact that the California Department of Public Health (“Department”) moved Riverside County back to a restrictive tier for COVID-19 purposes.

To begin, the action of the Department is extremely limited in its scope, applying only to “small businesses like restaurants and gyms” and “personal care services.” It has no impact whatsoever on essential workers like CR&R Incorporated’s (“CR&R”) employees, who have been reporting to work the entire duration of the pandemic. Neither does it change the fact that CR&R is in full compliance with both the CDC regulations and the General Counsel’s guidelines, and was prepared to take a number of additional steps to ensure that no voter or Board Agent would have been in any danger had an in-person election been held.

The obvious purpose of the Regional Director’s request for judicial notice is to support his previous conclusion that workers who already report to work on a daily basis will risk exposure to COVID-19 simply because a Board Agent arrives to conduct an election. Thus, the Regional Director continues, albeit erroneously, to maintain that employees, CR&R, and the Union should be denied a manual election simply because the pandemic exists in the first instance.

As previously explained, however, if this were sufficient, without more, to deny a manual election, then it would have been pointless for the General Counsel to issue the 20-10 Memorandum. That the General Counsel did issue the guidelines, all of which CR&R is able to

meet, demonstrates that the fact of the pandemic without more cannot be the sole basis for denying a manual election.

Moreover, as established by the record, CR&R was prepared to go even further than required by the GC's guidelines by, for example, supplying all employees and the Board Agent with personal face shields, installing Plexiglas to separate the Board Agent from voters and to separate the voting stations, and taking temperatures, among many other measures. Coupled with the fact that the record contains absolutely no evidence of any CR&R employee having been infected with COVID-19, either at or away from the worksite, that Riverside restaurants and hair salons may be held to a higher standard than previously has absolutely no relevance to this case.

Based on the above, and CR&R's Brief in Support of Request for Review of Regional Director's Decision and Direction of Election, the Board should deny the request to take judicial notice, vacate the Regional Director's Decision and Direction of Election, direct the Regional Director to void the impounded ballots, and order a manual election.

Respectfully submitted this 2nd day of November, 2020.

**CR&R INCORPORATED**

By:

*/s/ Jeffrey A. Berman*

Jeffrey A. Berman  
Jennifer L. Mora  
SEYFARTH SHAW LLP

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CR&R Incorporated

Employer,

And

PACKAGE AND GENERAL UTILITY  
DRIVERS, TEAMSTERS LOCAL UNION  
NO. 396

Petitioner.

Case Nos. 21-RC-262469;  
21-RC-262474

**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2020, I served a copy of the foregoing **OPPOSITION TO REGIONAL DIRECTOR'S REQUEST FOR JUDICIAL NOTICE** upon the following, by sending a true and correct copy of the same via email and first class United States mail, with adequate postage prepaid, addressed as follows:

Ms. Amanda Lively  
[alively@wkcelegal.com](mailto:alively@wkcelegal.com)  
Wohlner Kaplon Cutler Halford & Rosenfeld  
16501 Ventura Boulevard Suite 304  
Encino, CA 91436

Mr. Jim Smith  
[jimsmith@local396.net](mailto:jimsmith@local396.net)  
Package and General Utility Drivers,  
Teamsters Local Union No. 396  
880 Oak Park Road, Suite 200  
Covina, CA 91724

Mr. William Cowan  
[william.cowan@nlrb.gov](mailto:william.cowan@nlrb.gov)  
National Labor Relations Board  
Region 21  
312 N Spring Street  
Suite 10150  
Los Angeles, CA 90012



Jennifer L. Mora  
Counsel for Employer